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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FIVE

HWA BUM SHIN,

Plaintiff and Respondent,

v.

HYO SOOK YANG et al.,

Defendants and Appellants.

B290890

(Los Angeles County  
Super. Ct. No. BC677268)

APPEAL from a judgment and an order of the Superior  
Court of Los Angeles County, Holly J. Fujie, Judge. Affirmed.

Kevin H. Jang for Defendants and Appellants.

David H. Rho for Plaintiff and Respondent.

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Defendants Hannah Huh and Hyo Sook Yang (collectively, “defendants”) appeal from the trial court’s denial of their anti-SLAPP motions. Defendants argue the trial court erred in finding the motions untimely. We find no abuse of discretion and affirm.

***FACTUAL AND PROCEDURAL BACKGROUND***

In September 2017, Hwa Bun Shin sued defendants for intentional misrepresentation, malicious prosecution, and defamation. Shin alleged that defendants had conspired to deceive him into accepting checks as payment for a loan. Defendants allegedly did not intend to be responsible for the sums paid by check, and filed a dozen frivolous lawsuits to extort a settlement from Shin.

Defendants demurred, and Shin elected to amend the complaint. On January 9, 2018, Shin filed a first amended complaint (FAC) alleging causes of action for fraud and malicious prosecution against defendants based on the same theory. Defendants demurred again, and the trial court overruled the demurrer. At the same time, the trial court sustained the demurrer of another party as to the malicious prosecution cause of action, and granted Shin leave to amend.<sup>1</sup>

On March 28, 2018, Shin filed his second amended complaint (SAC). The fraud and malicious prosecution causes of action were based on the same allegations as set forth in the

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<sup>1</sup> The other party, Dong Hyuk Joo, is not part of the present appeal.

FAC.<sup>2</sup> On May 21, 2018, defendants each filed a special motion to strike the fraud and malicious prosecution causes of action.<sup>3</sup> Defendants argued that their motions were timely because “no other anti-SLAPP motion [was] filed previously,” and the motions had been filed within 60 days of the SAC.

The trial court denied the motions because they were filed more than sixty days after the filing of the FAC, which the court found to be the operative pleading, and defendants had “provided no reason why the Motion[s] should be heard late.” Defendants timely appealed.

### ***DISCUSSION***

“The anti-SLAPP statute, [Code of Civil Procedure] section 425.16, allows a court to strike any cause of action that arises from the defendant’s exercise of his or her constitutionally protected rights of free speech or petition for redress of grievances. (§ 425.16, subd. (b)(1).)” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 311–312.) “The special motion may be filed within 60 days of the service of the complaint or, in the court’s discretion, at any later time upon terms it deems proper.” (§ 425.16, subd. (f).) “‘An amended complaint reopens the time to file an anti-SLAPP motion without court permission only if the amended complaint pleads new causes of action that could not have been the target of a prior anti-SLAPP motion, or adds new allegations that make previously pleaded causes of action subject

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<sup>2</sup> The only new allegation with respect to defendants was that defendants attempted to maximize Shin’s attorney fees while minimizing their own.

<sup>3</sup> Defendants were represented by the same counsel. Although they filed individual motions, the motions were identical.

to an anti-SLAPP motion.’ ” (*Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 641 & 646 (*Newport*) citing *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1219.)

We review de novo whether the special motions to strike were filed within 60 days of the filing of an amended complaint that pled new causes of action subject to an anti-SLAPP motion or added allegations that made causes of action subject to an anti-SLAPP motion. We review for abuse of discretion the court’s decision not to permit the filing of a special motion to strike beyond the 60-day limit. (*Kunysz v. Sandler* (2007) 146 Cal.App.4th 1540, 1542–1543.)

Defendants argue the trial court “should consider this motion timely, especially under (1) prior demurrer sustained history and (2) Plaintiff’s purported change of causes of actions two (2) times.” We understand defendants’ argument to be that the trial court erred in finding their motions to be untimely because the time is not to be measured from the FAC, and defendants filed their motions within 60 days of the SAC.

However, the SAC did not add any new causes of action against defendants or substantively alter the remaining causes of action against them. As the SAC did not “plead[] new causes of action that could not have been the target of a prior anti-SLAPP motion, or add[] new allegations that [made] previously pleaded causes of action subject to an anti-SLAPP motion,” it did not reopen the time period for filing an anti-SLAPP motion. (*Newport, supra*, 4 Cal.5th at p. 641.) Defendants have also provided no reason why the trial court should have exercised its discretion to allow the late filing of their anti-SLAPP motions. The court did not abuse its discretion.

***DISPOSITION***

The order and judgment are affirmed. Respondent is to recover his costs on appeal.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.